

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

DR. ERIK NATKIN, DO PC, a Utah corporation; and **DR. ERIK NATKIN, DO**, an individual,

Plaintiffs,

v.

AMERICAN OSTEOPATHIC ASSOCIATION, et al.,

Defendants.

Case No. 3:16-cv-1494-SB

ORDER

Michael H. Simon, District Judge.

United States Magistrate Judge Stacie Beckerman issued Findings and Recommendation in this case on July 27, 2017. ECF 118. Judge Beckerman recommended that Plaintiff's motion to certify the Court's May 8, 2017 Order for interlocutory appeal be denied.

Under the Federal Magistrates Act ("Act"), the Court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate." 28 U.S.C.

§ 636(b)(1). If a party files objections to a magistrate's findings and recommendations, "the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." *Id.*; Fed. R. Civ. P. 72(b)(3).

Plaintiffs timely filed an objection (ECF 120), to which Defendants responded (ECF 122-125). The Court notes that Plaintiffs raise numerous arguments for the first time in Plaintiffs' objections to Judge Beckerman's Findings and Recommendations. The Court exercises its discretion not to consider those arguments. *See* 28 U.S.C. § 636(b)(1) (permitting the court to "receive further evidence" at its discretion); *see also United States v. Howell*, 231 F.3d 615, 621 (9th Cir. 2000) (discussing the Circuit split on whether a district court must or may consider new evidence when reviewing *de novo* a magistrate judge's findings and recommendation, and concluding that a district "has discretion, but is not required" to consider new evidence).

The Court has reviewed *de novo* those portions of Judge Beckerman's Findings and Recommendation to which Plaintiffs have objected, as well as Plaintiffs' timely objections and Defendants' responses. The Court agrees with Judge Beckerman's reasoning that Plaintiffs fail to meet the first and second requirements for interlocutory review. The Court ADOPTS the portions of the Findings and Recommendation to which Plaintiffs object.

For those portions of a magistrate's findings and recommendations to which neither party has objected, the Act does not prescribe any standard of review. *See Thomas v. Arn*, 474 U.S. 140, 152 (1985) ("There is no indication that Congress, in enacting [the Act], intended to require a district judge to review a magistrate's report to which no objections are filed."); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc) (holding that the court must review *de novo* magistrate's findings and recommendations if objection is made, "but not otherwise"). Although in the absence of objections no review is required, the Magistrates Act "does not preclude further review by the district judge[] *sua sponte* . . . under a *de novo* or any other standard." *Thomas*, 474 U.S. at 154. Indeed, the Advisory Committee Notes to Fed. R. Civ.

P. 72(b) recommend that “[w]hen no timely objection is filed,” the Court review the magistrate’s recommendations for “clear error on the face of the record.”

For those portions of Judge Beckerman’s Findings and Recommendation to which neither party has objected, this Court follows the recommendation of the Advisory Committee and reviews those matters for clear error on the face of the record. No such error is apparent.

The Court **ADOPTS** Judge Beckerman’s Findings and Recommendation, ECF 118. Plaintiffs’ Motion for Certification for Interlocutory Appeal of Order on Plaintiff’s Motion for Remand (ECF 114) is DENIED.

IT IS SO ORDERED.

DATED this 12th day of September, 2017.

/s/ Michael H. Simon
Michael H. Simon
United States District Judge